



POLICE DEPARTMENT

June 22, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Tiffany Dozier
Tax Registry No. 938398
44 Precinct
Disciplinary Case No. 85030/09

The above-named member of the Department appeared before me on February 16, 2011, charged with the following:

1. Said Police Officer Tiffany Dozier, assigned to the 44th Precinct, on or about February 8, 2009, having been directed by New York City Police Captain James J. Franzo to report for duty, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS-
GENERAL REGULATIONS

2. Said Police Officer Tiffany Dozier, assigned to the 44th Precinct, on or about February 8, 2009, scheduled to perform her regular tour of duty, said police officer was absent without leave. (*As amended*)

P.G. 203-05, Page 1, Paragraphs 1 & 2 – PERFORMANCE ON DUTY-GENERAL
P.G. 205-18, Pages 1 & 2 – ABSENT WITHOUT LEAVE-PERSONNEL
MATTERS

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

It is recommended that the Charges and Specifications be dismissed

INTRODUCTION

There is no factual dispute in this matter. It is not in dispute that Lieutenant Christopher Farrell, Operations Coordinator for the 44 Precinct where Respondent was assigned, testified in essence that Respondent's request for excusal from work for February 8, 2009 was denied due to a limitation on mandatory excusal percentages, i.e., manpower issues. It is also not in dispute that Captain James Franzo testified in essence that he ordered Respondent to report for duty on February 8, 2009 given the minimum manning issues and that when she failed to report stating her obligation to God on Sunday, she was suspended. It is also not in dispute that Sergeant Kevin Grayson, a Conditions Sergeant in the 44 Precinct testified and stated in essence that he was directed to suspend Respondent for failing to comply with Franzo's order.

It is also not in dispute that on or about February 8, 2009 Respondent having been directed by New York City Police Captain James J. Franzo to report for duty, did fail and neglect to comply with said order (Specification No. 1). It is also not in dispute that on or about February 8, 2009 that Respondent, scheduled to perform her regular tour of duty was absent without leave (Specification No. 2). What *is* in dispute is whether Respondent should be found Guilty of misconduct in this matter.

FINDINGS AND ANALYSIS

Respondent is charged with failing to comply with an order from Captain Franzo to report for duty on February 8, 2009 and being absent without leave from her regular tour of duty on February 8, 2009. I recommend that the two Charges and Specifications in this matter be dismissed.

This case stems from a misunderstanding that put Respondent and the Department on a collision course unnecessarily. To understand the gravamen of these two charges, one must look to the end result. Respondent applied for a reasonable accommodation for religious reasons through the Department's Office of Equal Employment Opportunity (OEEO). She was denied the first time. On a second submission to OEEO, she included documentation such as letters from her pastors in Hawaii, Colorado and New York. Respondent's second request for a reasonable accommodation for religious reasons was granted. The two specifications in this case arose essentially in the period between the first denial by OEEO and the subsequent approval by OEEO.

Black's Law Dictionary defines a reasonable accommodation as, "An action taken to adapt or adjust for an employee's religious need or practice, done in a way that does not impose an undue hardship on the employer."¹ Respondent testified credibly before this Court that she is a devout Christian who was raised in a devout Christian household by her mother and father. They attended church every Sunday, and it was well understood that they did not work on Sundays. Respondent testified that when she obtained her first job, in addition to honoring her parents, she made a personal commitment that she would not work on Sundays for as long as she is able to work.

¹ Deluxe Seventh Edition (1999)

Respondent began working as a babysitter at the age of 11, had a part-time job at age 16 and never worked on Sunday

Respondent was asked to explain to the Court her decision to not work on Sundays Respondent said that in accordance with the scriptures, in the Ten Commandments her belief is codified She stated that in the Bible, Exodus 20 8 states

Remember the Sabbath day, to keep it holy Six days you shall labor and do all your work, but the seventh day is the Sabbath of the Lord, your God In it you shall do no work, nor your son, nor your daughter, nor your male servants, nor your female servants, nor your cattle, nor your stranger who is within your gates For in six days the Lord made the heavens and the earth, the seas and all that is in them, and rested the seventh day Therefore, the Lord blessed the Sabbath day and hallowed it

Respondent stated that Jesus was resurrected on a Sunday so her family observes Sunday as their Sabbath She explained, "The Sabbath is a day of rest, to refrain from working, to honor God, to worship Him, to rest, to renew yourself, and to focus on God I attend services and sometimes, yes, I am in church all day But other times, it's simply--it's a day to honor God by resting from work and refraining from work "

Respondent, who lived in Hawaii prior to July 2005, testified credibly that she contacted the Department by calling 212-RECRUIT about her interest in joining the Department as a police officer She testified that she expressed in her inquiries not only her interest in becoming a New York City police officer, but also her strong religious belief in not working on her Sabbath day, Sunday From her recruitment call, to her discussions with the Applicant Processing Division and the Police Academy, Respondent was told by numerous sources that the Department makes reasonable accommodations

for - - - - -

Hawaii to join the New York City Police Department

Respondent worked for her first six months at the Police Academy. Respondent expressed her concern to her company commander about having Sundays off, but she worked steady Monday to Friday, so she had no issues with Sundays off at the Police Academy. She was then transferred to the 44 Precinct and she testified that she expressed her concern for having Sundays off from work. Respondent stated that she was allowed overtime for time. She would work assignments that no one else in the command wanted to do, to accrue overtime so that she could submit Leave of Absence Reports (UF-28s) for Sundays and Lieutenant Cartwright would sign her leave slips.

Respondent stated that the 44 Precinct started a Conditions Unit. Someone aware of her religious observance reached out to Respondent to work in that unit because they had steady weekends off. Respondent testified that she worked in the Conditions Unit at the 44 Precinct for two years until the unit was disbanded. From Respondent's appointment to the Department until the disbandment of the Conditions Unit, a period from July 11, 2005 to February 2006, Respondent had never worked one Sunday since joining the Department.

Once the Conditions Unit was disbanded, Respondent was assigned to patrol within the 44 Precinct, which entailed rotating regular days off (RDOs). She conferred with her immediate supervisor and lieutenant who advised her not to worry, that if she put in a UF-28, her leave would be granted absent exigent circumstances. Sometime in 2006, Respondent was told that she needed to submit a request for a reasonable accommodation for religious reasons to OEEA. Respondent stated that she submitted the

request. The form was very brief and she was not advised on how to complete it. She requested an accommodation for Sundays off for religious reasons. Respondent testified that she had letters from her pastors and other documentation and anticipated a hearing on her application. This never occurred. She made telephone calls and was eventually informed by Sergeant St. James that her request for an accommodation was denied because her religion did not require Sundays off.

Respondent never received anything in writing from OEEA denying her written request for a reasonable accommodation. OEEA did, however, send a memorandum to that effect to Respondent's commanding officer (Respondent's Exhibit A). Respondent testified that she contacted OEEA and inquired about an appeals process. Respondent stated that she was told that no appeals process existed.

The first problem arose for Respondent when she was scheduled to work Sunday, February 1, 2009, almost five years after joining the Department. Respondent submitted a UF-28 for that date which was initially granted and later denied. Respondent did not report to work that Sunday. On Monday, when she reported for work, she was issued a Schedule 'A' Command Discipline and forfeited five vacation days, which Respondent accepted on advice of her union delegate [Department's Exhibit (DX) 2].

The following Sunday, February 8, 2009, Respondent was scheduled to work. She submitted a UF-28 for the day which was initially approved by a sergeant and a lieutenant, but later denied by the Administrative Lieutenant/ Operations Coordinator (DX 1). He stated that due to mandatory excusal percentages delineated by the borough, he needed Respondent to work and as such, denied her leave request. Respondent stated

that she could not work on Sunday and failed to appear for work. She was carried as absent without leave without proper authority (AWOL), and suspended from duty.

Respondent testified that on Sundays, she spends her day in church. Her church has three services. She usually attends the morning service, ushers for the second service and attends the evening service. She also, on some occasions, performs other volunteer services while at the church. On February 8, 2009, upon the order of the 44 Precinct Executive Officer, Franzo, Grayson went to Respondent's church and spoke to Respondent's pastor. Grayson then spoke to Respondent. Respondent stated that he advised her that she had to report for duty and if she did not, she would be suspended. Respondent stated that she would not report for duty. Grayson contacted Franzo and Respondent spoke to him. He informed Respondent that she was suspended and that she had to turn over her shield and Department ID card to Grayson. Respondent complied and said that she gave her locker combination to the officer who accompanied Grayson so that her firearm could be retrieved from her locker. Respondent was suspended for 11 days.

Respondent said that once she received the Command Discipline, she was advised by her commanding officer that if she had another UF-28 that was disapproved and she failed to report for work, she would be suspended, which occurred on February 8, 2009. Respondent stated that since she had no appeals process for her denied reasonable accommodation request with OEEO, she contacted the City Commission on Human Rights. She was told that she should have had a reasonable accommodation. Following her suspension, Respondent reported to the Department's Office of Labor Relations when she was being restored to duty. She was advised that there was a misunderstanding and

that she was told to inform her command to work with her in terms of getting Sundays off until the issue is resolved. Respondent was also advised to resubmit her application for a reasonable accommodation along with any supporting documentation. Respondent's second request for a reasonable accommodation for religious purposes was granted.

Respondent testified that from February 2009, following her suspension, until June 2009, Respondent submitted UF-28s to get Sundays off with her command which were granted. In June 2009, Respondent was granted a reasonable accommodation by OEEO. Now that she had the reasonable accommodation, she was able to have Sundays off by changing her RDO with another member of the service.

It is clear from her testimony and her actions that Respondent has a deeply held, lifelong and heartfelt religious commitment to not work on Sundays. Nonetheless she testified that she hopes it never happens but if there is a catastrophic event such as September 11, 2001 and her emergency response is needed, she could envision working on a Sunday.

The relation back² theory is a general principle of American jurisprudence. It stands for the proposition that an act done at a later time is considered to have occurred at an earlier time.² Respondent eventually was granted her request for a reasonable accommodation once it was determined that she had a strong religious conviction for observing her Sabbath that was documented. But for the miscommunications when Respondent originally applied for an accommodation, (i.e., no additional documentation was provided, and Respondent was told that there was no appeals process when her initial request for an accommodation was denied), Respondent would have been granted a reasonable accommodation and the issues which arose in the pending Charges and

² Black's Law Dictionary, id

Specifications would not have occurred. Thus the Court believes that the relation back doctrine is applicable here. By all means, Franzo gave a lawful order to Respondent to report for work and she was AWOL for failing to appear, but had she been granted the reasonable accommodation initially, these issues would not have arisen. This is evinced by Respondent's suspension for only 11 days, and the fact that the 44 Precinct Operations Coordinator/Administrative Lieutenant was advised to grant Respondent's request for Sundays off even if the command went over its excusal percentages (i.e., do not "pick on" Respondent due to her religious beliefs). Also Respondent's eventual reasonable accommodation was granted. It is uncontested that when she was returned to duty she was informed by the Deputy Commissioner for Labor Counsel that she would be accommodated.

Accordingly, it is recommended that Specification Nos. 1 and 2 be dismissed and that all time, pay and benefits lost by Respondent during her suspension be restored.

APPROVED
NOV 15 2011
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

Claudia Daniels DePeyster
Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials